IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE SEVENTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 23734 of 2003

Between:

Syed Yousuf S/o Rasool, aged 54 years,
H.No.TRT-1198, Sanathnagar, Hyderabad-500 018

..... PETITIONER

AND

1 A.P. State Financial Corporation rep. by Managing Director
Chirag Lane, Hyderabad-500 001.
2 A.P. State Financial Corporation rep. by Asst. General Manager
22-95, Reddy Complex, Ramachandrapuram Branch, Hyderabad 500 032.
3 Mr. D.B. Narendra Babu 101, Laxmi Nilayam, J.B. Nagar, Nizampet Road, Kukatpally, Hyderabad-500 072.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of mandamus or any other appropriate writ declaring that the action of the first and second respondents in exploiting the mistake/collateral security in bidding process and award order on third respondent is illegal and arbitrary and direct the first and second respondents to stay the award order on third respondent bearing No.AFC/RCP/MR&R/CHG/2003-2004/2923, dt.8-10-2003 for the sale of properties of M/s Mobina Ice Makers, Plot No.43, Ameenpur Village, Patancheru Mandal, Medak District, A.P. and if necessary grant a declaration that the deeds be split in bifurcating the land of unit as 800 Sq. yds. and land of collateral security as 4000 sy. yrds and sell the unit only (excluding collateral security) for recovery of arrears with a waiver of some amount (may be Rs.5 Lakhs) under OTS Scheme as applicable to all suffering SSI entrepreneurs due to losses, industrial recession and bankruptcy and grant such relief as it deems fit and proper under the circumstances of the case.

Counsel for the Petitioner:PARTY-IN-PERSON

Counsel for the Respondent Nos.1 and 2: Mr.KURITI BHASKARA RAO (STANDING COUNSEL)

Counsel for the Respondent No.3: A.RAMANARAYANA

The Court made the following :

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THE HON'BLE SRI JUSTICE B.PRAKASH RAO

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WRIT PETITION NO.23734 OF 2003

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ORDER:

Heard the party-in-person, and Sri K.Bhaskar Rao, the learned standing Counsel appearing for the respondent Nos.1 and 2 and Sri A.Ramanarayana, the learned Counsel appearing on behalf of the 3rd respondent herein.

2. In this writ petition the petitioner, who is an owner of the unit, seeks to assail, by way of Writ of Mandamus, the action of the respondents herein in trying to affect the sale of the unit as well as the adjoining property, as illegal. This writ petition was earlier disposed of by this Court as per the orders dated 24-12-2003. However, on appeal, at the instance of the respondent No.3, in Writ Appeal No.280 of 2004, a Division Bench of this Court set aside the same, as per the order dated 11-02-2004, on the ground that the respondent No.3 was not heard and no opportunity was given and directed for a Writ Petition to be heard and decide afresh, after giving opportunity to the appellant therein on being heard. Accordingly, the matter was reheard.

3. The petitioner as a party-in-person reiterates that having regard to the amount involved, for which the respondents had taken recourse to conduct the auction for sale of the properties, which consists of both the unit, covering an extent of 800 square yards and the adjoining land about 4000 square yards, it would suffice to proceed only against the open land, so that the proper amounts can be fetched,

without taking into consideration the unit and its other liabilities. In fact, this Court has acceded to the said request on the earlier occasion and directed the sale by inviting the tenders separately for the unit and the adjoining land.

4. Sri A.Ramanarayana, the learned Counsel for the 3rd respondent, submitted that having regard to the powers as conferred under Section 29 of the S.F.C. Act, vis-à-vis the powers of judicial review under Article 226 of the Constitution of India, this Court cannot sit over as a Court of Appeal on such administrative actions on the part of the corporation and therefore the question of re-fixation of terms of auction does not arise.

5. Considering the submissions made afresh, from the petitioner as well as the other two counsel, the question, which falls for consideration is, as to whether on the facts and circumstances, it is feasible to conduct an auction separately for two areas as pointed out by the petitioner.

6. There is no dispute to the fact that the petitioner had obtained loan from the respondent-corporation in the year 1990 and the said liability was not fully discharged and therefore, the respondent-corporation has taken recourse to put the unit as well as adjoining land for sale. Accordingly, notifications have been issued and the auction was held on 11-12-2002 and 12-12-2002. The 3rd respondent herein has offered a sum of Rs.20,00,000/- for the entire extent. Having regard to the grievance of the petitioner that since the entire property had mixed up and put up in one sale, necessarily it invited a very low offers and whereas if the open land and the unit can be separated it is going to receive far better and higher efforts, which would not only discharge the liability to the Corporation, but also can discharge the other liabilities.

7. The learned standing Counsel appearing on behalf of the Corporation did not seriously oppose the said proposal of the petitioner for separating the property into two and inviting tenders accordingly. However, by taking into consideration the objection raised on behalf of the respondent No.3, who was submitted the offer of Rs.20,00,000/-, it is not permissible for this Court to travel beyond the terms as already fixed in an auction, which is initiated under Section 29 of the S.F.C. Act. However, in a given circumstances, without giving any go bye to the very auction as sought to be conducted and with a view to find out for any such comparatively better

offers, and especially if it can be found that not only the unit holder, but also the Corporation is deprived of such higher amounts, this Court can give appropriate directions in the interest of justice.

8. In the circumstances, the Writ Petition is accordingly disposed of directing the respondent Nos.1 and 2 herein to proceed with the sale of the industrial unit and the adjoining land separately by inviting tenders separately. It shall be open for the 3rd respondent herein to participate in such tenders. It is needless to mention that in the event the bid for the required amount received for the adjoining land, the liability of the respondent Nos.1 and 2 herein is that the same can be finalized without any necessity to conduct the sale of the unit. However, in the event the amount under the bids for both the land and the unit is less than the Rs.20,00,000/- as offered by the 3rd respondent, the sale which has already been conducted in favour of the 3rd respondent shall be confirmed in pursuance of the previous auction. No costs.

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B.PRAKASH RAO, J.

Dated 17-08-2004.

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1 The Managing Director, A.P. State Financial Corporation,
Chirag Lane, Hyderabad-500 001.
2 The Asst. General Manager, A.P. State Financial Corporation
22-95, Reddy Complex, Ramachandrapuram Branch, Hyderabad 500 032.

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